



Federal Communications Commission  
Washington, D.C. 20554

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**DA 09-2009**

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In re: SLC TV Licensee Corp.  
Microwave Industrial/Business Pool Stations  
WPOP413, WPOP414, WPOP415, Salt Lake City, Utah  
File Nos. 0003666637, 0003666638, 0003666639

Dear Ms. Kirby and Mr. Stansbury:

On December 4, 2008, you filed, on behalf of your client, SLC TV Licensee Corp. (SLC) applications to renew the licenses of Microwave Industrial/Business Pool Stations WPOP413, WPOP414, and WPOP415,<sup>1</sup> each of which had expired on October 5, 2008. Because SLC filed its applications more than thirty days after expiration, SLC requests as part of its applications waiver of Section 1.949(a) of the Commission's Rules<sup>2</sup> to allow acceptance of its late-filed applications.<sup>3</sup> For the reasons stated below, we deny SLC's Waiver Request and dismiss its Renewal Applications.

SLC is the licensee of microwave industrial/business facilities WPOP413, WPOP414, and WPOP415, which are used in conjunction with commercial television station KUTV (CBS, Channel 2), Salt Lake City, Utah.<sup>4</sup> The licenses for WPOP413, WPOP414, and WPOP415 were originally granted on October 5, 1998, and expired on October 5, 2008.<sup>5</sup> Section 1.949(a) of the Commission's Rules requires licensees to file renewal applications no later than the expiration dates of licenses.<sup>6</sup> SLC failed to do so, not filing until December 4, 2008, and requesting that Section 1.949(a) of the Commission's Rules be waived to allow acceptance of SLC's late-filed applications.<sup>7</sup>

SLC states that its renewal applications were not timely submitted through an administrative oversight.<sup>8</sup> SLC further states that its microwave facilities are essential to the daily operations of KUTV, and argues that for SLC to reapply for new licenses would entail both new frequency coordinations and

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<sup>1</sup> Applications for Renewal of License, File Nos. 0003666637, 0003666638, 0003666639 (filed Dec. 4, 2008) (Renewal Applications).

<sup>2</sup> 47 C.F.R. § 1.949(a).

<sup>3</sup> Renewal Applications, Waiver Request (Waiver Request).

<sup>4</sup> *Id.*

<sup>5</sup> File Nos. 641858, 741859, 741860 (granted Oct. 5, 1998).

<sup>6</sup> *See* 47 C.F.R. § 1.949.

<sup>7</sup> Waiver Request.

<sup>8</sup> *Id.*

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the submission of applications for new licenses.<sup>9</sup> SLC contends that, during this time, it would be unable to use the microwave facilities and KUTV's operation would be compromised, and therefore it is in the public interest to grant SLC's requested waivers and renewal applications.<sup>10</sup>

The Commission's policy regarding reinstatement procedures in the Wireless Radio Services is as follows: Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's Rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.<sup>11</sup> Applicants who file renewal applications more than thirty days after the license expiration date may also request renewal of the license *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.<sup>12</sup> In determining whether to reinstate a license, we consider all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.<sup>13</sup> Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that SLC's late-filed renewal applications should be dismissed.<sup>14</sup>

Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.<sup>15</sup> In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.<sup>16</sup> Applicants may, however, file an application for renewal and request for waiver of the filing deadline if the renewal application is not filed in a timely manner. A waiver of the Commission's rules may be granted where the applicant demonstrates that (1) the underlying purpose of the rule would not be served or would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>17</sup>

We do not believe that SLC has satisfied either waiver prong. A licensee is fully responsible for knowing the term of its license and for filing a timely renewal application.<sup>18</sup> SLC makes no showing that

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS MO&O*).

<sup>12</sup> *Id.* at 11486 ¶ 22.

<sup>13</sup> *Id.* at 11485 ¶ 22.

<sup>14</sup> See, e.g., WSYX Licensee, Inc., *Order*, 15 FCC Rcd 19084 (WTB PSPWD 2000) (denying a request for waiver of Section 1.949 of the Commission's Rules to allow submission of late-filed renewal applications after the licenses expired, and dismissing the subject applications).

<sup>15</sup> 47 C.F.R. § 1.949(a).

<sup>16</sup> 47 C.F.R. § 1.955(a)(1).

<sup>17</sup> 47 C.F.R. § 1.925(b)(3).

<sup>18</sup> *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 22.

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the underlying purpose of the rule would not be served or would be frustrated by application to SLC in the instant case. Nor does SLC show how administrative oversight constitutes unique or unusual factual circumstances.<sup>19</sup> SLC fails to explain the cause of the oversight, nor explain what steps SLC has taken to avoid recurrence of the problem. The fact that SLC would need to coordinate applications for new stations and file applications for new licenses is not a unique or unusual factor justifying a waiver. Finally, SLC's concern about being unable to operate while it undergoes the frequency coordination and applications processes is misguided. In the interim period, SLC may file a request for Special Temporary Authority, in accordance with Section 1.931 of the Commission's Rules, if it wishes to continue operating the facilities. In view of the foregoing, we find that grant of SLC's requested waiver is not in the public interest.

Accordingly, IT IS ORDERED, pursuant to Section 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the requests for waiver of Section 1.949(a) of the Commission's Rules filed December 4, 2008 by SLC Licensee TV Corp. ARE DENIED, and application File Nos. 0003666637, 0003666638, 0003666639 SHALL BE DISMISSED.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

John J. Schauble  
Deputy Chief, Broadband Division  
Wireless Telecommunications Bureau

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<sup>19</sup> *Cf.* Southwest Central Rural Electric Cooperative Corporation, *Order on Reconsideration*, 16 FCC Rcd 5499, 5500 n. 7 (WTB PSPWD 2001) (licensee is responsible for failure to provide correct contact information).